

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

MARCH 14 AND 15, 2006

The meeting was called to order at 8:40 a.m. in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 Fifth Avenue North, Nashville, Tennessee 37247-1010, by President Dr. David Cunningham. Other members present were: Drs. Michael Zanolli, Charles White, Sr., Keith Lovelady, Mitchell Mutter, George Eckles, Barbara Engelhardt, Subhi Ali, Mr. Mark Brown, Ms. Mary Johnson and Ms. Nina Yeiser. Absent Board member was Dr. Allen Edmonson. Staff present included: Rosemarie Otto, Executive Director, Dr. Larry Arnold, Medical Director, Marsha Arnold, Unit Manager, Sandra Powell, Board Administrator and Mr. Robert Kraemer, Advisory Attorney.

Minutes

Minutes from the January 24 and 25, 2006 meeting were reviewed. Dr. Mutter made a motion to accept the minutes and Dr. Ali seconded the motion. The motion carried.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for the Medical Doctors, Medical X-Ray Operators, Athletic Trainer, Physician Assistants and Committee on Clinical Perfusionists were reviewed. Mr. Brown made a motion to ratify the approval of licenses and Dr. Ali seconded the motion. The motion carried.

New Applicant Interviews

Sara Louise Bomar, MD-Dr. Bomar is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Bomar's application for the Board. Dr. Bomar has a severe disability and has not practiced in four years. Dr. Cunningham suggestion was to issue an administrative license with no clinical practice. Dr. Ali made a motion to grant Dr. Bomar an administrative license without clinical practice. Ms. Yeiser seconded

the motion. The motion carried.

Peter Thomas Gardner, MD-Dr. Gardner is applying for a new license to practice medicine in Tennessee because his license was previously surrendered because of issues relative to the personal misuse of drugs. Dr. Arnold reviewed Dr. Gardner's application file for the Board. Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation spoke on behalf of Dr. Gardner. Dr. White made a motion to grant Dr. Gardner a license contingent upon a lifetime contract with TMF and Ms. Johnson seconded the motion. The motion carried.

Edward Levester Mosley, MD-Dr. Mosley is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Mosley's application file for the Board. Dr. Mosley plans are to take over a surgical practice in Memphis, Tennessee. The Board asked numerous questions to Dr. Mosley regarding quality of care issues. Dr. Mutter made a motion to grant Dr. Mosley a license contingent upon receipt by the Board's Administrative Office of three letters from healthcare practices where Dr. Mosley has practiced on a Locum Tenens license. These letters must affirm that Dr. Mosley has practiced within the standard of care during his tenure. Dr. White seconded the motion. Dr. Zanolli made an amendment that one letter must come from a Locum Tenens practice and two letters from hospitals where Dr. Mosley has practiced. These letters will be reviewed by Dr. Arnold and if all letters are positive, a license will be granted. Any letters that are negative will require Dr. Mosley's reappearance before the Board. Dr. Mutter made a motion to accept Dr. Zanolli's recommendation to amend and Dr. White seconded the motion. The motion carried.

Michael T. Okumura, MD-Dr. Okumura is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Okumura's application file for the Board. Dr. Okumura plans to practice at Baptist Hospital in Knoxville, Tennessee. Dr. Okumura has had previous problems with chemical dependency but has been chemical free since December 12, 2004. Dr. Roland Gray spoke on behalf of Dr. Okumura and informed the Board that Dr. Okumura is under a five year contract with the Tennessee Medical Foundation. Dr. Eckles made a motion to grant Dr. Okumura a license contingent upon receipt of a letter from Dr. Gray stating he is under a five year contract with TMF. Dr. Zanolli seconded the motion. The motion carried.

Keith Edward Thompson, MD-Dr. Thompson is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Thompson's application file for the Board. Dr. Thompson plans to practice general, thoracic and vascular surgery in Martin, Tennessee. Dr. Thompson had several malpractice issues and explained to the Board that he has had no negative sanctions taken against his license in Florida. After further questions Dr. Zanolli made a motion to grant Dr. Thompson a license and Dr. Mutter

seconded the motion. The motion carried.

Susan Elizabeth Ward-Jones, MD-Dr. Ward-Jones is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Ward-Jones' application file for the Board. Dr. Ward-Jones has a history of substance abuse and her license had previously been disciplined in Arkansas. Dr. Ward-Jones plans to work with urgent care centers in Memphis, Tennessee. Dr. Gray spoke on behalf of Dr. Ward-Jones and stated that she has been clean and sober for nearly ten years. Ms. Yeiser made a motion to grant Dr. Ward-Jones a license and Ms. Johnson seconded the motion. The motion carried.

Reinstatement Interviews

Scott Lewis Hambleton, MD-Dr. Hambleton is applying for reinstatement of his medical license. Dr. Hambleton was before the Board because he failed to renew his previously probated license. Dr. Arnold reviewed Dr. Hambleton's reinstatement application for the Board. Dr. Hambleton's license was on probation when it went failed to renew because of issues relative to the personal misuse of drugs. He is asking the Board to reinstate his license on probation pursuant to the 2005 Agreed Order. Dr. Gray spoke on behalf of Dr. Hambleton and suggested he maintain TMF advocacy for a lifetime. Dr. Mutter made a motion to grant Dr. Hambleton reinstatement of his license contingent upon a lifetime contract with TMF and Dr. White seconded the motion. The motion carried. Dr. Cunningham informed Dr. Hambleton that if he has another relapse, the Board will permanently revoke his medical license.

Ray Elwin Methvin, MD-Dr. Methvin is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Methvin's application file for the Board. Dr. Methvin has not practiced since March 2001 and plans to work with the Public Health Department. Dr. Engelhardt suggested more competency information and Dr. White agreed with Dr. Arnold's recommendation to take and pass the SPEX exam for continued competency. Dr. White made a motion to grant reinstatement after successfully passing the SPEX exam and return for an appearance before the Board. Dr. Ali seconded the motion. Mr. Kraemer recommended Dr. Methvin withdraw his application until such time that he meets the Board's recommendations. Dr. Methvin withdrew his application. Dr. White withdrew his first motion and made a motion to grant Dr. Methvin reinstatement contingent on submitting a new reinstatement application and fee and submitting proof to Dr. Arnold that he took and successfully passed the SPEX exam. Mr. Brown seconded the motion. The motion carried.

Fasih Us Samad, MD-Dr. Samad is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Samad's application file for the Board. Dr. Samad has been disciplined by the Board and has been placed on the Inspector General's exclusion list

barring his participation in any programs that receive federal healthcare dollars for ten (10) years. Dr. Samad has not practiced since 2002. Dr. Cunningham suggested taking the SPEX exam. Dr. Mutter stated because of Dr. Samad's past history, he should also go through the Center for Personalized Education for Physicians (CPEP). Dr. Mutter made a motion that Dr. Samad take the SPEX exam and go through CPEP and Dr. Ali seconded. Dr. Samad was given an option to withdraw his application in lieu of accepting the Board's recommendations. He then withdrew his application.

James Armand Truan, MD-Dr. Truan is applying for reinstatement of his medical license. Dr. Arnold reviewed Dr. Truan's application file for the Board. Dr. Truan's plan is to do volunteer work but has not practiced in twenty-seven years. The Board felt that Dr. Truan would need to be retrained and suggested he minimally would have to take the SPEX exam. Dr. Mutter strongly suggested that the Board not reinstate Dr. Truan's license without substantial proof of clinical competency. Mr. Kraemer explained to Dr. Truan that he had the option to withdraw his application or let the Board take action. Dr. Truan withdrew his reinstatement application.

Ratification of Denial of Licensure

Carla Lynn-Boswell, MD-Dr. Lyn-Boswell is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Lyn-Boswell's application file for the Board. Dr. Arnold stated that the medical school Dr. Lyn-Boswell attended in the Caribbean is on the exclusion list of the California Medical Board. Ms. Yeiser made a motion to accept Dr. Arnold's recommendation of denial and Ms. Johnson seconded the motion. The motion carried.

Gabriel O. Itaro, MD-Dr. Itaro is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Itaro's application file for the Board. Dr. Itaro's medical license was revoked July 5, 1996 due to sexual boundary issues. Dr. Itaro has not complied with the conditions set forth by the Board. Dr. Arnold explained to the Board the evaluation he received from the Professional Renewal Center in Lawrence, Kansas regarding Dr. Itaro's sexual boundary issues. Moreover, TMF is not in a position to offer advocacy or monitoring to Dr. Itaro. Ms. Yeiser made a motion to accept Dr. Arnold's recommendation of denial and Ms. Johnson seconded the motion. The motion carried.

Rule Action

Mr. Jerry Kosten, Rules Coordinator, informed the Board of the rule actions for the Committee on Clinical Perfusionists regarding background checks for all new applicants from the January 31, 2006 rulemaking hearing and the December 16, 2005 rulemaking

hearing regarding screening panels, advertising, use of titles, reconsiderations and stays. Dr. White made a motion to adopt the rules and Dr. Mutter seconded the motion. After a roll call vote, the rule was adopted by unanimous vote.

Mr. Kosten informed the Board of the rule that passed February 6, 2006 regarding International Medical School Graduates. Under the new rule, international medical school graduates will have to provide documentation that their school meets or exceeds the standards for accreditation of United States schools set by the American Medical Association's Liaison Committee on Medical Education.

Discussion

Mr. Allen S. Craig, MD, State Epidemiologist for the Tennessee Department of Health addressed the Board. Dr. Craig asked the Board to require e-mail or fax numbers on applications and renewals to facilitate communications between the Department and physicians in the event of an emergency or to provide information regarding outbreaks of infectious diseases. Mr. Kraemer informed the Board that he would need to do some legal research on issues relative to privacy, especially if information gathered by the Board is going to be widely disseminated. Dr. White suggested deferring any decision until the May 2006 meeting. Dr. Craig then gave an update regarding influenza and past pandemics. Dr. Craig informed the Board that since 2003, there has been approximately one-hundred seventy (170) cases of the Avian flu and presently Vanderbilt is testing a vaccine for this strain. According to Dr. Craig, the virus appears to be transmitted from bird to bird, or bird to human, but not then transmitted to other humans. The World Health Organization and the Center for Disease Control and Prevention continue to monitor the situation. According to Dr. Craig, there is a reasonable chance the Avian flu will reach the United States. Social distancing will not stop the epidemic, but may spread it out and give hospitals help with surge capacity. It is estimated that in-patients will increase in area hospitals by 25% or greater. Forty percent of people may not show up to work. Dr. Craig estimated that one quarter (1/4) to one third (1/3) of the population may contract H₅N₁.

Mr. Joel Herring, President of the Examination Processing Center reviewed for the Board the Limited Scope Exam Results for July through December, 2005 (6 months) and January through December, 2005 (12 months). Mr. Herring explained to the Board how he tracks proficiency of course providers which one report is for six (6) months and the other is for twelve (12) months. Ms. Otto stated the ones below the pass rate will be invited to appear at the May meeting to explain their plans to approve their courses.

Mr. Owen London addressed the Board regarding his instructional program for x-ray operators which was reported as well below the required pass fail rate. Mr. London

apologized for having to reappear and discussed reasons why the rate is below the acceptable minimal standard. Mr. London asked the Board for a six (6) month extension to improve. He informed the Board of his plan that will require the exam to be taken before a certificate is awarded. Ms. Yeiser made a motion to extend four months and if his program does not comply, it will be turned over to the Office of General Counsel for decertification. Dr. Mutter seconded the motion. The motion carried.

Dr. Soheil Saul Lahijani, MD addressed the Board regarding the seven year rule and handed out supporting licensure information to the board for review. Dr. Lahijani informed the Board that he had applied previously for a license but withdrew his application because he was outside the seven years. The Board members informed Dr. Lahijani that he would have to retake Steps 1 and 2 in order to meet the seven year requirement.

Dr. Eckles gave a brief report on the task force to study prescribing practices in Tennessee.

Brett Moldenauer, President for the Tennessee Acupuncture Council addressed the Board regarding Senate Bill 3421/House Bill 3205 and asked for resolution from the Board opposing the Legislation. Mr. Kraemer stated he would re-write the letter written previously to suit the present situation and direct it to the Legislature. The Board restated its support for the Acupuncture Council and the current legislative scheme designed to insure that the practice of Acupuncture remains a part of medicine. Dr. Mutter made a motion to have Mr. Kraemer re-write a letter and address it to the Legislature. Dr. White seconded the motion. The motion carried.

Discussion began concerning the Attorney General's opinion about ownership of medical practices by allied health professionals who then hire physicians for the purpose of supervision. Mr. John Williams, representative from the Tennessee Association of physician assistants (TAPA) spoke on behalf of Physician Assistants. Mr. John Michael Briley, MSN, APRN, BC, Chairman of the Government Affairs Committee of Tennessee Nurses Association (TNA) addressed the Board. Mr. Briley asked the Board why an opinion was being requested because he was not aware of any negative outcomes where nurse practitioners hired supervising physicians for the sole purpose of supervision. Drs. Zanolli and Ali suggested strongly that there were numerous issues and they were inclined to seek the opinion.

Mr. Kraemer addressed the Board in regards to their consideration to approve a written request for an Attorney General's Opinion on the issue of whether medical practices can be lawfully owned by allied health professionals and whether physicians can be employees of, or independent contractors to, allied health professionals for purposes of

supplying statutorily required physician supervision for the allied health professional's delivery of medical services. Mr. Kraemer handed the Board a copy of the drafted letter that will go to the Attorney General's Office. After further discussion, Dr. Ali made a motion to submit a letter to the Attorney General's Office for an opinion and Dr. Engelhardt seconded the motion. The motion carried.

Ms. Otto reviewed a letter submitted by Senator Herron regarding SB2804/HB2975 in reference to the seven year rule. A copy of the letter and senate bill handed to the Board for review. Ms. Otto referred to the Teleconference that was conducted in 2004 in reference to the seven year rule. Dr. Ali made a motion to respond by letter as the Board did previously in 2004 and Dr. White seconded the motion. The motion passed. Dr. Mutter's suggestion was to make sure the Legislature understands the full ramification of the seven year rule and to stress that at present forty-three (43) states hold the seven year rule.

Reports

Budget Report

The report was reviewed by the Board. Ms. Otto stated there continues to be a budget surplus. She also reported on several upcoming expenses such as the RBS upgrade and the health-related boards' move to its new location. She also informed the Board that it was likely that the Tennessee Medical Foundation would seek additional funding in May 2006.

Investigation Report

Ms. Lea Phelps, Disciplinary Coordinator reviewed the investigative report in the absence of Ms. Denise Moran.

Disciplinary Report

Ms. Lea Phelps, Disciplinary Coordinator reviewed her report for the Board.

OGC Report

Mr. Robert Kraemer reviewed his report for the Board. Mr. Kraemer reviewed the rules that are still in the Attorney General's Office which were:

1. Radiologic Assistants and Examination
2. Criminal Background Checks

3. 2005 Legislation and Densitometry
4. Titles and Special Volunteer Licensure
5. MPLLC, X-Ray and Reference Letters
6. Office Based Surgery, Advertising and supervision.

Mr. Kraemer stated that the Office of General Counsel currently has one hundred twenty-nine open cases against physicians and x-ray operators.

“Noteworthy” section of the internet

The Board did not designate anything for the “noteworthy” section of the internet.

Disciplinary Action

Agreed Orders

Gilbert Whitmer, MD-Dr. Whitmer was neither present nor represented by legal counsel. Rhonda Hooks represented the State. The proposed Agreed Order was handed out to the Board for review. Dr. Whitmer is charged with violating TCA 63-6-214(b) (1), TCA 63-6-214(b) (5), TCA 63-6-214 (b) (12), and TCA 63-6-214 (b) (20). In 1998, Dr. Whitmer and a patient became romantically involved. On several occasions in 1997, Dr. Whitmer inappropriately obtained Percocet, a Schedule II controlled substance, by directing three (3) employees to fill prescriptions that he wrote in their name and then to deliver the drugs to him. In 1999, Dr. Whitmer began taking Ultram that he obtained from the office samples and by self-prescribing. Dr. Whitmer signed a one-year contract with the North Carolina Physicians Health Program. In 2001, the contract was terminated after Dr. Whitmer complied with his contract. On January 30, 2003, Dr. Whitmer entered into a Consent Order with the North Carolina Board which reprimanded his North Carolina medical license. The proposed Agreed Order stated that Dr. Whitmer must immediately surrender his medical license. The surrender of Dr. Whitmer's medical license shall have and shall be considered to have the same effect as a revocation. Dr. Whitmer must pay the actual and reasonable costs of prosecuting the case to the extent allowed by law. Dr. Mutter made a motion to accept the proposed Agreed Order and Ms. Yeiser seconded the motion. The motion passed unopposed.

Richard Johnson, MD-Dr. Johnson was neither present nor represented by legal counsel. Mr. Shiva Bozarth represented the State. The proposed Agreed Order was handed out to the Board for review. Dr. Johnson is charged with violating TCA 63-6-214(b) (12) and 0880-2-015(4) (a) of the Tenn. COMP.R. & REGS. Between the dates of January 5, 2002 and February 19, 2003, Dr. Johnson prescribed to himself and/or his wife medications in violation of the Tennessee Medical Practice Act. Dr. Johnson

prescribed to his wife twenty-five (25) times during this time frame and to himself sixty (60) times. Dr. Johnson did not maintain any medical records for himself or his wife. The prescriptions written by Dr. Johnson were for medications that had previously been prescribed by his primary care physician. Dr. Johnson did prescribe cough syrup containing codeine to himself on two occasions February 18, 2002 and November 9, 2002. Dr. Johnson did prescribe tramadol, to his wife on two occasions and himself on four occasions. Dr. Johnson completed an assessment by the Vanderbilt Comprehensive Assessment Program and a report was generated on December 21, 2005, which stated that there was no evidence that Dr. Johnson was currently suffering from an active addiction. Dr. Johnson was unaware of the Board's policy on "Prescribing for Oneself and One's Family" when he prescribed these medications for himself and his wife. The proposed Agreed Order stated that Dr. Johnson shall obtain and maintain advocacy of the Tennessee Medical Foundation for at least 5 years. Dr. Johnson shall cause the Tennessee Medical Foundation to submit quarterly reports stating whether he has been compliant with his contract with the Tennessee Medical Foundation. Dr. Johnson must submit proof that he has completed the Prescribing Controlled Substances course offered by the Center for Professional Excellence to the Board within 6 months of the ratification of the Agreed Order. Dr. Johnson must pay eight (8) Type B civil penalties in the amount of \$500 each for a total of \$4,000 within 6 months of the ratification of the Agreed Order. Ms. Yeiser made a motion to accept the proposed Agreed Order and Dr. Engelhardt seconded the motion. The motion passed unopposed.

James Roy Appleton, III, MD-Dr. Appleton was neither present nor represented by legal counsel. Ms. Schean Belton represented the State. The proposed Agreed Order was handed out to the Board for review. Dr. Appleton is charged with violating TCA 63-6-214(b) (1), TCA 63-6-214(b) (5) and TCA 63-6-214(b) (18). On or about May 6, 2004, Dr. Appleton wrote a prescription for Tramadol, for his personal use. On or about May 17, 2005, Dr. Appleton wrote a prescription for Hydrocodone cough syrup, a controlled substance, for his personal use. On or about May 19, 2005, Dr. Appleton admitted to having a drug and alcohol problem which adversely affected his ability to communicate with his staff and patients. The proposed Agreed Order stated that Dr. Appleton's medical license shall be placed on probation for a minimum of three (3) years or the duration of advocacy of the Tennessee Medical Foundation, whichever is longer, or any extension thereof. As a condition of probation, Dr. Appleton is required to present evidence to the Board that he has obtained and maintained the advocacy of the Tennessee Medical Foundation. Dr. Appleton shall also present evidence, in the form of discharge summaries, of in patient rehabilitation hospitalization for the periods of June through September 2005. Dr. Appleton must comply with the terms and conditions of probation as set forth by the Order. Dr. Appleton shall abide by his contract with TMF and shall maintain the lifetime advocacy of the TMF contract. Dr. Appleton shall pay all costs of

prosecuting the case to the extent allowed by law. Dr. Mutter made a motion to accept the proposed Agreed Order and Ms. Yeiser seconded the motion. The motion carried unopposed.

Orders of Compliance

Daniel Slonaker, MD-Dr. Slonaker was present but not represented by legal counsel. Mr. Robert Kraemer represented the State. The Order of Compliance was handed out to the Board for review. Dr. Slonaker was charged with violating TCA 63-6-214 (b) (1), TCA 63-6-214 (b) (4) and TCA 63-6-214 (b) (12). On November, 2003, Dr. Slonaker entered into an Agreed Order. The Agreed Order stated that Dr. Slonaker's license be placed on probation for a period of two (2) years from the effective date of the Order. Dr. Slonaker must attend a two-day medical record course offered at Case Western Reserve University in Cleveland, Ohio, or equivalent course approved by the Board. Dr. Slonaker must attend a three day seminar entitled "Prescribing Controlled Drugs", at the Center For Professional Health" at Vanderbilt University Medical Center, in Nashville, Tennessee, or equivalent course approved by the Board. Dr. Slonaker must take forty (40) hours of family practice courses approved by the American Academy of Family Physicians per year for each of the two (2) years of probation and secure fifty (50) hours of other continuing medical education per year for each of two (2) years of probation. Dr. Slonaker must surrender his DEA Certificate if he has not completed the two (2) day medical records course at Case Western Reserve University, or equivalent course. Dr. Slonaker must maintain a prescription logbook for recording the dispensing and prescribing of controlled substances for the period of probation. Dr. Slonaker must pay two (2) Type A one thousand (\$1,000) dollars civil penalties in the amount of two-thousand (\$2,000) dollars and one Type B five hundred (\$500) dollar civil penalty in the amount of five hundred (\$500) dollars for the violations. A letter from Ms. Lea Phelps, Disciplinary Coordinator states that Dr. Slonaker has resolved all responsibilities as set forth from the 2003 Agreed Order. Dr. Slonaker explained to the Board how he deals with complying and treating patients. Ms. Yeiser made a motion to accept the Order of Compliance and Dr. Eckles seconded the motion. The motion passed unopposed.

Steven Fath, MD-Dr. Fath was neither present nor represented by legal counsel. Mr. Robert Kraemer represented the State. The Order of Compliance was handed out to the Board for review. Dr. Fath was charged with violating TCA 63-6-214 (b) (1) and TCA 63-6-214 (20). Dr. Fath entered into a Consent Order in 2004. The Consent Order stated that Dr. Fath's medical license be suspended for a period of the time to run concurrently with any disciplinary action, including suspension and probation, ordered by or pursuant to the June 4, 2004 Texas Agreed Order. The suspension of Dr. Fath's Tennessee medical license shall be stayed and placed on probation for the duration of the stayed suspension. Dr. Fath must abstain from the consumption of alcohol, dangerous drugs or

controlled substances in any form except as prescribed by another physician to him for legitimate and documented therapeutic purposes. Dr. Fath must give any and all treating physician(s) a copy of the Consent Order and ensure that a report to the Board is made by the treating physician or that a copy of Dr. Fath's medical record is provided by the treating physician to the Board's Medical Director. Dr. Fath must submit to drug and alcohol screens upon request. Dr. Fath must continue to meet with the Guadalupe Valley Hospital Impaired Physicians Committee on a regular basis of not less than twice a week. Dr. Fath must maintain advocacy with the Tennessee Medical Foundation and have that director submit quarterly reports to the Board's Medical Director. Dr. Fath has resolved all responsibilities and complied with all requirements as set forth by the 2004 Consent Order. Dr. Eckles made a motion to accept the Order of Compliance and Dr. Ali seconded the motion. The motion passed unopposed.

Consent Orders

Carol Vandiveer, MD-Dr. Vandiveer was neither present nor represented by legal counsel. Mr. Robert Kraemer represented the State. The proposed Consent Order was handed out to the Board for review. Dr. Vandiveer is charged with violating TCA 63-6-214(b) (3) and 63-6-214(b) (12). In early 2005, Dr. Vandiveer wrote and telephoned in prescriptions for Phentermine and Alprazolam for persons other than herself but picked up and used those prescriptions herself. The proposed Consent Order stated that Dr. Vandiveer's license shall be placed on probation for a period of no less than five (5) years from the date of the Order. Dr. Vandiveer shall, within thirty (30) days of the Order, enter into and fully comply with the terms of an advocacy contract with the Tennessee Medical Foundation during the entire period of probation. Dr. Vandiveer shall, within sixty (60) days of the date of the Order, make herself available to and undergo an evaluation by the Vanderbilt Comprehensive Assessment Program and have the result of that evaluation released and sent to the Board. Dr. Vandiveer shall comply with all recommendations made as a result of her VCAP evaluation. Dr. Vandiveer shall continue in therapy with her psychiatrist and have quarterly progress reports submitted from the psychiatrist to the Board's Medical Director. Within sixty (60) months of the date of the Order, Dr. Vandiveer shall submit evidence satisfactory to the Board's Medical Director that she has successfully completed the Vanderbilt prescribing program. Upon successful completion of the probation and before the probation may be lifted, Dr. Vandiveer must petition and appear for an Order of Compliance at which time she shall also present satisfactory evidence that she has entered into an advocacy contract with the Tennessee Medical Foundation which shall cover the lifetime of her license. Dr. White made a motion to accept the proposed Consent Order and Ms. Yeiser seconded the motion. The motion passed unopposed.

Terrance S. Dunn, MD-Dr. Dunn was neither present nor represented by legal counsel.

Mr. Robert Kraemer represented the State. The proposed Consent Order was handed out to the Board for review. Dr. Dunn is charged with violating TCA 63-6-214 (b) (12). Dr. Dunn prescribed for a pain patient without a medical office location and in such a manner as to be detrimental to the patient's future treatment. The proposed Consent Order stated that Dr. Dunn's license be placed on probation for a period of no less than five (5) years from the date of the Order. Dr. Dunn shall enter into and fully comply with the terms of an advocacy with the Tennessee Medical Foundation during the entire period of probation. Upon successful completion of the probation and before the probation may be lifted, Dr. Dunn must petition and appear for an Order of Compliance at which time he shall also present satisfactory evidence that he has entered into an advocacy contract with the Tennessee Medical Foundation which shall cover the lifetime of his license. Dr. White made a motion to accept the proposed Consent Order and Dr. Lovelady seconded the motion. The motion passed unopposed.

Letters of Reprimand

Charles A. Kirby, MD-Dr. Kirby was neither present nor represented by legal counsel. Ms. Rhonda Hooks represented the State. The Letter of Reprimand was handed to the Board for review. Dr. Mutter recused himself. Dr. Kirby is in violation of TCA 63-6-214(b) (1) and TCA 63-6-214 (b) (4). The Letter of Reprimand stated that in the presence of his patients, Dr. Kirby repeatedly exhibited bouts of anger during surgical procedures that have resulted in his use of obscene language towards surgical staff. On one occasion, during surgical procedure, Dr. Kirby struck a patient on or about the head area while using expletives toward the patient. As conditions in the Letter of Reprimand, Dr. Kirby shall attend a Continuing Medical Education anger management course entitled "Physicians' Development Program in Miami, Florida" within twelve (12) months of the ratification of the Letter of Reprimand. Dr. Kirby shall provide the Board proof of attendance and completion of the course required within twelve (12) months from the date of the ratification of the Letter of Reprimand. Dr. Kirby must pay two (2) Type B civil penalties of five hundred dollars (\$500.00) each for a total of one thousand dollars (\$1,000.00), due within thirty (30) days of the ratification of the Letter of Reprimand. Dr. White made a motion to accept the Letter of Reprimand and Ms. Yeiser seconded the motion. The motion passed unopposed.

Adjourned at 4:15 p.m.

March 15, 2006

Tennessee Room

Panel: Zanolli, Engelhardt, Lovelady, Yeiser

9:15 a.m.

Contested Case Hearings

Nicholas W. Howard, MD-Dr. Howard was not present but was represented by legal counsel, Mr. Frank Scanlon. Ms. Lexie Whittemore represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. The Notice of Charges was handed to the panel for review. Dr. Howard is charged with violating TCA 63-6-214 (b) (1), TCA 63-6-214(b) (5) and TCA 63-6-214(b) (18). On or about January 22, 2005, Dr. Howard was observed by the Shelby County Sheriff's Office, Narcotics Division Unit, in a "hand in hand" transaction with a black female in a vehicle. When Dr. Howard's vehicle was stopped, the Officers obtained 12.7 g of white powder (cocaine) in the armrest of his vehicle. On or about March 31, 2005, Dr. Howard stated to a Health Related Boards Investigator, that he and his wife have been using cocaine recreationally about once a month since on or about May, 2004. Ms. Whittemore gave her opening statement followed by Mr. Scanlon. Dr. Roland Gray, Director for the Tennessee Medical Foundation was called on as a witness. Dr. Gray stated that Dr. Howard agreed to enter the Center for Professional Excellence program in Nashville. Advocacy was withdrawn after Dr. Gray recently received information from the Mississippi Program of an arrest report from Shelby County regarding Dr. Howard's continued use of cocaine. Both counsels waived closing arguments. The Panel deliberated. Dr. Zanolli made a motion to accept the Finding of Facts and Dr. Lovelady seconded the motion. The motion carried. Dr. Zanolli made a motion to accept the Causes of Action #15 and Dr. Engelhardt seconded the motion. The motion carried. Dr. Lovelady made a motion to accept Causes of Action #16 and Dr. Zanolli seconded the motion. The motion carried. Dr. Zanolli made a motion to accept Causes of Action #17 and Dr. Lovelady seconded the motion. The motion carried. Dr. Engelhardt made a motion to suspend Dr. Howard's medical license for six (6) months, maintain contract with TMF, enter into and complete the evaluation program by the Center for Professional Excellence and pay costs. Dr. Zanolli seconded the motion. The motion carried. Dr. Zanolli made a motion to amend the Order and add the Medical Director as one of the reviewers of Dr. Howard's evaluation and Dr. Engelhardt seconded the motion. The motion carried. The policy statement was read and the reason the actions were taken were because of Dr. Howard's substance abuse which puts the citizens of Tennessee in danger. For this reason the actions were taken to protect the health, safety and welfare of the citizens of the State of

Tennessee. Dr. Zanolli made a motion to accept the policy statement and Dr. Lovelady seconded the motion. The motion carried.

Steven Brazeal, MD-Dr. Brazeal was not present nor represented by legal counsel. Ms. Schean Belton represented the State. The Honorable Ann Johnson, Administrative Law Judge presided. Ms. Belton presented proof of certified card where the Notice of Charges was mailed informing Dr. Brazeal of the hearing. Ms. Belton stated that Dr. Brazeal was given sufficient notice of the hearing and asked the panel for default. Dr. Zanolli made a motion to proceed in default and Dr. Engelhardt seconded the motion. The motion carried. The Notice of Charges and a letter from Dr. Brazeal were handed to the panel for review. Dr. Brazeal is charged with violating TCA 63-6-214 (b) (1) and TCA 63-6-214 (b) (10). Ms. Belton gave a brief overview of the case. On May 10, 2004, before the Criminal District Court #5 of Dallas County, Texas, Dr. Brazeal pled guilty to "evading arrest" and was ordered to spend one night in the county jail and pay seven hundred and seventy one dollars (\$771.00) in fines and costs. On August 6, 2004, before the County Court of Law No 4 of Montgomery County, Texas, Dr. Brazeal pled guilty to "assault by contact" and was ordered to pay ten thousand dollars (\$10,000.00) in restitution. In her closing arguments, Ms. Belton asked the panel for revocation of Dr. Brazeal's Tennessee medical license and to assess civil penalties. The panel deliberated. Dr. Zanolli made a motion to accept the Finding of Facts #10, 11, 12 and Dr. Lovelady seconded the motion. The motion carried. Dr. Zanolli made a motion to accept the Causes of Action # 13 and Dr. Engelhardt seconded the motion. The motion carried. Dr. Zanolli made a motion to accept the Causes of Action # 14 and Dr. Engelhardt seconded the motion. The motion carried. Dr. Zanolli made a motion to amend the motion to accept the Causes of Action #14 as related to #11 and #12 of the Finding of Facts. Dr. Engelhardt seconded the motion. The motion carried. Dr. Lovelady made a motion to accept civil penalties as court cost only and Dr. Zanolli seconded the motion. The motion carried. Dr. Zanolli made a motion to revoke Dr. Brazeal's medical license and Dr. Lovelady seconded the motion. The motion carried. The policy statement was read and the reason the action was taken was due to the civil actions taken against the physician. For this reason the actions taken were to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Zanolli made a motion to accept the policy statement and Dr. Lovelady seconded the motion. The motion carried.

Adjourned at 11:15 a.m.

Magnolia Room

Panel: Brown, Cunningham, Mutter, White

Contested Case Hearing

Curtis Buchheit, MD-Dr. Buchheit was present and represented himself.

The case is a continuation from the March 14 and 15, 2006 meeting and will be continued at the next scheduled meeting which will be held May 16 and 17, 2006.

Cumberland Room

Panel: Ali, Johnson, Eckles

Contested Case Hearing

Chris Jones-Mr. Jones was present and represented by legal counsel, Mr. Frank Scanlon. Mr. Shiva Bozarth represented the State. The Honorable Steve Darnell, Administrative Law Judge presided. The Notice of Charges was handed to the panel for review. Mr. Jones is charged with violating TCA 63-19-102(5), TCA 63-19-108, TCA 63-19-114 and Tenn. Comp. R. & Regs. Rule 0880-3-.15(5) (b) (1). Mr. Jones has neither held a license to practice medicine in Tennessee nor a license as a Physician's Assistant or Athletic Trainer. Mr. Jones did hold a temporary physician assistant license from October, 1995 through March, 1998 and received a temporary certificate but to date has not passed the licensing exam which would have entitled Mr. Jones to receive a full license. Mr. Jones has worked in a doctor's office providing care to patients while unlicensed. Mr. Bozarth gave his opening statement followed by Mr. Scanlon. Witnesses were called by both sides. Mr. Bozarth gave closing arguments as well as Mr. Scanlon. A proposed Order was submitted to the panel for review. The panel deliberated. Ms. Johnson made a motion to accept the Finding of Facts #2 through 20 with the exclusions of #16, 18 and 19. Dr. Ali seconded the motion. The motion carried. Ms. Johnson made a motion to amend the Finding of Facts to exclude #3 because Mr. Jones did hold a temporary license for a period of time. Dr. Ali seconded the motion. The motion carried. Dr. Ali made a motion to accept the Conclusions of Law and Ms. Johnson seconded the motion. The motion carried unopposed. Dr. Ali made a motion for Mr. Jones to pay six (6) Class A civil penalties in the amount of \$1,000.00 each for a total of \$6,000.00. The policy statement was read and the reason the actions were taken was to protect the health, safety and welfare of the citizens of the State of Tennessee. Ms. Johnson made a motion to accept the policy statement and Dr. Ali seconded the motion. The motion passed.

Adjourned at 6:30 p.m.

Dr. Allen S. Edmonson, Secretary

Date